Supreme Judicial Court of Vermont.

JAMES MORSE *v.* LAWRENCE BRAINERD AND OTHERS.

Where goods were delivered to one company in a connected line of transportation, dividing the freight according to their respective services, and were described in the bill of lading, as received by the company to whom delivered and to be transported throughout the line, that company was held responsible for any damage occurring upon any portion of the line, on the ground of an implied contract to deliver safely at the end of the route.

THE opinion of the court was delivered by

PIERPOINT, C. J.—This case comes into this court by appeal from a decree of the Court of Chancery, accepting the report of a Master, and determining the amount due from the defendants to the plaintiff, James Morse. The preliminary proceedings, which have resulted in bringing the case before us in its present form, we have not been furnished with the means of stating. That is probably a matter of no importance, as no questions are now made by counsel on either side except such as arise upon the Master's report.

From that it appears that the defendants were, and still are operating the Vermont Central and Vermont and Canada Railroads, as trustees, receivers, and managers, for the first mortgage bondholders, by the appointment and under the direction of the Court of Chancery; and that the business of said roads and of said trustees and receivers was and is to carry passengers and freight for hire, and that said trustees and receivers were operating said road for that purpose, under their said appointment as aforesaid.

That on the 14th of November 1859, and while the defendants were in the possession of, and operating and managing said roads as such receivers, the said Morse delivered to them, at Swanton in this state, a quantity of cattle; that the said cattle were received by one Bradford Scott, station agent at said Swanton, the agent and servant of the defendants at that place for such purposes; that the said cattle were the property of said Morse, and were shipped for, directed to, and were to be delivered at Medford, Massachusetts, and were received to be sent and forwarded to that place. The cattle were duly sent forward by the defendants; they were transported safely over the Vermont and Canada and Vermont Central Railroads, but while on the lower and

connecting roads, and on their way to Medford, the point of their destination, they were materially injured and damaged, so that on their arrival at Medford they were of much less value by reason of such injury, and in consequence thereof the said Morse sustained a serious loss—a compensation for that loss is what the said Morse is now seeking in this proceeding.

The defendants claim that they are not liable for any injury to the cattle that happened after they passed off from the roads of which they had the charge and management on to the connecting roads, and on their way to said Medford.

The principle is now well settled in this state, that railroad companies, as common carriers, may make valid contracts to carry and transport property beyond the limits of their own roads, and where they do, they are bound to deliver the property at its place of destination according to their contract, and are liable for all injury to such property prior to its delivery, although such injury happens after the property has passed over their road on its way, and while in the charge of other carriers over whom they have no control: *Noyes* v. *Rut. and Bur. Railroad Co.*, 27 Vt. 110, and the cases there referred to.

This contract may be either express or implied.

In England the rule is, that where a railroad company as common carriers receive property destined and directed to a point beyond the termination of their own road, they are bound to deliver it at its place of destination, without a stipulation to that effect. The law imposes that obligation upon the receipt of the property, and if the company would avoid such obligation, they must do it by a stipulation limiting their liability to injuries happening upon their own road.

But in this country the rule established in most of the states is, that the company are liable for injuries that occur beyond the termination of their own road, only when they stipulate to deliver the property at a point beyond, and that is the extent to which the decisions in this state have as yet gone, and is as far as we are now disposed to go.

If, then, the defendants are to be made liable in this case, it must be upon the ground that they received the property in question under a contract, express or implied, to deliver it at Medford, its place of destination.

Whether there was such a contract or not is mainly a question

of fact, to be determined upon the master's report and the evidence referred to.

That there was no express contract for the delivery of this property at Medford is conceded.

Was there an implied contract to that effect?

From the master's report and the testimony of Lawrence Brainerd, one of the defendants, which is referred to as a part of said report, it appears that there was a business arrangement entered into between the several roads that constitute a line of communication by railroad from Ogdensburgh, in the state of New York, to Boston, Mass., for the transportation of passengers and freight; that in this chain the Vermont and Canada and the Vermont Central railroads constitute links; that under this arrangement, when a car-load of property was sent from one point upon the line to another, it went to its destination without a change of cars; the amount to be paid for carrying the property through the whole distance was agreed upon and fixed at its place of departure by the parties receiving it. This sum might be paid in gross by the consignor in advance, or by the consignee on its arrival. The freight was not to be paid to the several roads over which the property passed in its transit, but the amount which each was to receive was adjusted between themselves in their monthly settlements. This property was billed through from the place where received to the place to which it was sent, and the way-bill in this case is quite significant of what the practice was, and how the parties understood the transaction. It is as follows: "Merchandise transported by the trustees first mortgage bonds Vt. Central Railroad Co. *from Swanton, Vt., to Medford, Mass.*, Nov. 14th 1859." then is entered the No. of the car and name of its owner, name of the consignee, description of the property, receipt, rate per hundred, and the whole amount of the freight, "*payable at the station sent to.*"

When a party sends a car-load of live-stock over the roads, he is entitled to a free pass over all the intermediate roads on the train, with the car, to its place of destination. Such a pass was given to Morse. These facts, and, in short, without stopping to enumerate further, the great mass of facts and testimony reported by the master, are consistent, and many of them only consistent with the idea of an assumed liability, to transport the property in this case from Swanton to Medford.

Such, we think, must have been the understanding and expectation of Morse and the station agent at Swanton at the time the property was put on to the defendants' road at that place. It was according to the regular and established course of their business, and such an arrangement would have been within the legitimate scope of the authority of the station agent.

We think the fair and just implication from the whole case as we have it before us is, that the defendants, when they received the property of Morse, took upon themselves the obligation to transport the property safely from Swanton to Medford, and such being the case, they are liable to Morse for the injury the property sustained on its way, as reported by the master.

As there are two cases now before us between the same parties, depending upon the same principles and similar facts, the entries will be in both cases that the decree of the Chancellor accepting the report of the master and fixing the liability of the defendants, and the account thereof, is affirmed, and the cases remanded to the Court of Chancery for final disposition.

The foregoing case is interesting to the profession and to business men, as tending to define the grounds upon which the courts will imply a contract to deliver goods at their destination, the transit extending over more than one company's line. That is, at the present time, the most embarrassing problem connected with the duty of railways as common carriers. Almost all the through transportation extends over numerous successive lines, and many of them almost completely consolidated into one trunk line, and under one management. In all such cases it must be expected, of course, that the company receiving the goods and executing the bill of lading stipulating for a delivery at the end of the route, as in the present case, will be held responsible for safe delivery at that point. But where any such responsibility is expressly repudiated in the bill of lading, as is now the more common practice on these long lines of transportation, it will be impossible to hold the first company responsible for damage occurring upon the line of the other companies without practically adopting the English rule, that such is always the implied understanding. This implication obtains in the English courts, even where part of the line is by steamboat: *Wilby* v. *West Cornwall Railway*, 2 H. & N. 702. And where there is in such case an agreement between the railway company and the steamboat line to run in connection and divide the freight, both companies are held responsible for all contracts made by either: *Hayes* v. *South Wales Railway*, 9 Ir. Com. Law 474; *Webber* v. *Great Western Railway*, 3 H. & C. 771.

From the extreme difficulty of defining precisely what is sufficient ground to imply a contract by the first company to carry through, there is a constant tendency toward the adoption of the English rule, as being more easy of application, and, on the whole, not unjust in its operation with reference to connecting lines of freight transportation. Indeed in all cases, where the companies for the en-

tire line are so connected, that each company receiving goods for transportation, fixes the rate of compensation for the whole route, and it is all received and receipted for in one gross sum, there should be an implied undertaking raised for safe transportation through the entire route on the part of the company receiving the goods: *Angle* v. *Mississippi, &c., Railway*, 9 Iowa 487. But it is said here, that if the consignee knew, or might readily have learned, that there was no partnership connection between the different companies, but only one of agency, this will rebut the implication.

The rule stated in the principal case seems quite unobjectionable, that where there is a business connection between the different companies throughout the route, and the consignor has reason to believe that the company to whom he delivers the goods held themselves out as responsible for the entire route, he will be entitled to so hold them.

I. F. R.

Louisville Court of Chancery.

WILSON, PETERS & CO. *v.* SEIBERT.

A mortgage of future-acquired chattels is valid only when the property mortgaged may be regarded as a part of, or *accretion to*, property in actual or legal possession of the mortgagor at the time of making the mortgage.

A mortgage of property in which the mortgagor has no present interest, and which he must acquire, if at all, in *substitution for* or independently of any property he now has, is not valid to create any lien which equity will recognise or enforce.

THE opinion of the court was delivered by

WOOLLEY, Chancellor.—Can a mortgage upon chattels, to be acquired, and having *then* no existence, create a lien against future creditors? And, if so, in what cases will such a mortgage be sustained?

These questions have never been decided expressly by the Supreme Court of Kentucky, and that fact and their importance have made them obtain from me great attention.

The arguments of both counsel were unusually elaborate and satisfactory, and the large number of authorities to which they referred me pointed at once to the true line of inquiry.

In the case of *Morrell* v. *Noyes*, decided in Maine in 1864, and reported in 3 Am. Law Reg. N. S. 18, it was held that such a mortgage was good by a railroad corporation upon rolling-stock and machinery to be purchased in the future, and to be applied to the road itself, as an accretion to the property of the mortgagor. It will be observed that use and accretion, and not traffic